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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 540

NELSON FOSTER AND GEORGE PAYNE,
Petitioners,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

REPLY BRIEF FOR PETITIONERS

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May 5, 1947.

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REPLY BRIEF FOR PETITIONERS

Respondent's Brief contends that the Illinois rule as to the right to counsel applied against petitioners here exists in a majority of the states. It interprets the decisions of this Court as holding that there is no violation of due process unless it is affirmatively shown that the accused was prejudiced by failure to have counsel or that "special circumstances," such as extraordinarily complex legal questions, existed. Respondent characterizes the showing of the difficultles confronting petitioners during the state court proceedings as mere "inferences" or "presumptions" not sufficient to invoke the right to counsel. Respondent further suggests that petitioners have chosen the wrong remedy under Illinois procedure, and that this Court on review should therefore not reverse for a new trial on the issue of guilt.

We will show that the due process question of right to counsel is rightfully before this Court; that under the decisions of this Court no showing of actual prejudice to the accused in

criminal cases is necessary to invoke the right to counsel; that the record in this case and the statutes and case law of the State of Illinois, which are a matter of judicial notice, demonstrate the difficulty and complexity of the questions facing petitioners and therefore their need for counsel; and finally, that a minority rather than a majority of the states adopt the rigorous and inequitable rule of the State of Illinois as to right to counsel in criminal cases.

ARGUMENT

I.

THE SUBSTANTIVE QUESTION OF THE RIGHT TO COUNSEL UNDER THE FOURTEENTH AMENDMENT TO THE CONSTITUTION IS PROPERLY BEFORE THIS COURT, AND PETITIONERS HAVE CHOSEN THE ONLY PROCEDURE AVAILABLE TO THEM UNDER ILLINOIS LAW.

The opinion of the Supreme Court of Illinois in this case ineluctably demonstrates that that Court decided the substantive federal question of the right to counsel and disposed of the petitioners' writ of error on the basis of the Illinois rule that petitioners waived said right by failing to request that counsel be appointed for them, despite the failure of the trial court even to advise them of their right to counsel (R. 9). The question of the validity of the application of the Illinois rule under the circumstances of this case is therefore squarely before this Court. See *Hawk* v. *Olson*, 326 U.S. 271 (1945), where the Court said (p. 278):

> "As the Supreme Court of Nebraska considered the motion for continuance on the merits, no question of state procedure for the reexamination of criminal convictions arises."

See also *Smith* v. *O'Grady*, 312 U.S. 329, 331 (1941); *Rice* v. *Olson*, 324 U.S. 786, 791 (1945).

Since Respondent apparently concedes that the Illinois Supreme Court decided the right to counsel question on the merits, its suggestion that petitioners' proper remedy under Illinois law was by *coram nobis*, thus implying that writ of error was not appropriate, is irrelevant. However, analysis of Respondent's position may be of interest. It should first be noted that this position is inconsistent with its concession that the petitioners in *Carter* v. *Illinois*, 329 U.S. 173 (1946), had, in filing a motion for writ of error—the same procedure here invoked—chosen the correct method of raising the due process question of right to counsel under Illinois law. It is also inconsistent with Respondent's failure to raise any question as to the procedure followed by petitioners in this case in its briefs to the Supreme Court of Illinois and in opposition to *certiorari*.

Furthermore, the Illinois statute[1] and court decisions[2] have long established that writ of error is the appropriate method for review of judgments in criminal cases. Indeed, under the circumstances of this case, writ of error was the *only* remedy available.[3] Petitioners here rely upon the failure of the trial judge to

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[1]The statute reads:

"Writs of error in all criminal cases, where sentence is not death, shall be considered as writs of right and issued of course." Ill. Rev. Stat. (1945), Ch. 38, section 771.

[2]*Mohler* v. *People*, 24 Ill. 26 (1860); *Ingraham* v. *People*, 94 Ill. 428 (1880); *Gallagher* v. *People*, 207 Ill. 247, 69 N.E. 962 (1904); *People* v. *Johnson*, 285 Ill. 194, 120 N.E. 453 (1918); *People* v. *Thompson*, 392 Ill. 589, 65 N.E. (2d) 362 (1946); see also *United States* v. *Ragen*, 143 F. (2d) 774, 777 (C.C.A. 7th, 1944).

[3]Respondent's suggestion (Respondent's Brief, p. 15) that petitioners can obtain relief through a motion to vacate the judgment against them is not supported by the case cited. (*People* v. *Bogolawski*, 317 Ill. 499 [1925]). The Court there held only that a denial of a motion to withdraw a plea of guilty was error. A motion by petitioners to vacate the judgment against them would have been barred by the fact that the term of court in which they were convicted had expired. *People* v. *Collins*, 353 Ill. 468, 187 N. E. 450 (1933); Cf. *People* v. *Watson*, 394 Ill. 177, 68 N.E. 265 (1946).

advise them of their right to counsel or to assign counsel to represent them. Although a sharply divided court indicated in *People* v. *Green*, 355 Ill. 468, 189 N.E. 500 (1934) (Respondent's Brief, p. 14), that *coram nobis* was appropriate to raise a question of right to counsel, the later unanimous decision in *People* v. *Parcora*, 358 Ill. 448, 193 N.E. 477 (1934), is directly to the contrary. The court there ruled that *coram nobis* was designed to correct errors which the trial court would not have committed if it had been in possession of facts then unknown to it, and therefore was not available when the basis of the claim was the accused's lack of counsel, inasmuch as this fact was certainly not unknown to the trial judge.

Other procedural rules also bar the use of this remedy. In Illinois *coram nobis* is available only for review of facts not appearing on the face of the record and does not lie to correct errors of the court upon questions of law. *People* v. *Rave*, 392 Ill. 435, 65 N. E. (2d) 23 (1946); *People* v. *Noonan*, 276 Ill. 430, 114 N. E. 928 (1917). Since petitioners in this case are relying upon the showing of the common law record that they were not advised of their right to or offered counsel, and were not represented by counsel, and since these facts were well known to the trial court and appear from the record made by it, and since the trial court's error was one of law, *coram nobis* would not lie.[1] And even if the remedy of *coram nobis* were not barred by these rules, it would be unavailable because more than five years passed since the final judgment against petitioners. *People* v. *Rave*, *supra*, 392 Ill. 435, 443, 65 N.E. (2d) 23, 27 (1946); *People* v. *Sprague*, 371 Ill. 627, 629, 21 N.E. (2d) 763, 764 (1939); *People* v. *Dabbs*, 372 Ill. 160, 166, 23 N.E. (2d) 343, 346 (1939).

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[1]It should be noted that Respondent's contention that this Court assumed *coram nobis* an adequate remedy in *Woods* v. *Nierstheimer*, 328 U. S. 211 (1946); *White* v. *Ragen* and *Lutz* v. *Ragen*, 324 U. S. 760 (1945), is incorrect. The decisions held merely that *habeas corpus* was not the proper procedure under Illinois law and did not pass upon the availability of *coram nobis*.

II.

PETITIONERS WERE DENIED DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT AS INTERPRETED BY THIS COURT.

Respondent repeatedly states the issue before this Court as whether the Fourteenth Amendment imposes an absolute requirement that counsel be appointed for accused in state criminal cases (Respondent's Brief, pp. 9, 13, 16, 18). But petitioners need not and do not rely on such a rule. The simple issue here is whether under the circumstances of this case petitioners were denied due process under the Fourteenth Amendment by the failure of the trial court to appoint or offer to appoint counsel for them or even to advise them of their right to counsel. Respondent's misapprehension of the question is, we believe, largely responsible for the inaccuracies in its classification of state cases (*infra*, Point III) and its analysis of the decisions of this Court.

To illustrate, Respondent contends (Respondent's Brief, pp. 3, 4, and 14) that petitioners must affirmatively show that they were prejudiced by the absence of counsel. True it is that this Court has at times reviewed the record to ascertain whether accused were prejudiced in cases where they had waived counsel (*Adams* v. *U. S.*, 317 U. S. 269 (1942)) or where, counsel having appeared, the claim was that their assistance was ineffective (*Powell* v. *Alabama*, 287 U. S. 45 (1932); *Avery* v. *Alabama*, 308 U. S. 444 (1939)). But where there is no waiver and no counsel appeared, a different question is presented. Thus the Court in *Avery* v. *Alabama*, *supra*, 308 U. S. 444, 445, stated:

> "Had petitioner been denied any representation of counsel at all, such a clear violation of the Fourteenth Amendment's guarantee of assistance of counsel would have required a reversal of his conviction."

Under these circumstances a showing of prejudice is unnecessary. *Williams* v. *Kaiser*, 323 U. S. 471, 475 (1944); *Tomkins* v.

Missouri, 323 U. S. 485, 488 (1945); *Canizio* v. *New York*, 327 U. S. 82, 85 (1946); *Glasser* v. *United States*, 315 U. S. 60, 76 (1942); *Hawk* v. *Olson*, 326 U. S. 271, 278–279 (1945).

Respondent also argues that in order for a denial of counsel to amount to a deprivation of due process, there must be "special circumstances" such as a complex case or a less than ordinarily understanding defendant (Respondent's Brief, pp. 4, 11, 13, 18). In its review of the decisions of this Court involving right to counsel, Respondent hurdles the substantial similarities between the situation of the accused in such cases and that of the petitioners here. For instance, it would explain *Rice* v. *Olson*, 324 U. S. 786 (1945), on the ground that the accused was an Indian and that among the legal questions involved was one of jurisdiction of the court, as contrasted with those facing the petitioners in this case. It attempts to distinguish *Canizio* v. *New York*, 327 U. S. 82 (1946); *Williams* v. *Kaiser*, 323 U. S. 471 (1945); *Tomkins* v. *Missouri*, 323 U. S. 471 (1945), and *De Meerleer* v. *Michigan*, . . . U. S. . . ., 67 S. Ct. 596 (1947) (discussed in petitioners' brief, pages 19 to 27), only on the ground that the procedure adopted in such cases contemplated a hearing on the truth of allegations as to lack of counsel. But the procedural difference does not amount to a distinction; these cases are direct authority that where facts substantially identical to those here present and in no wise questioned by the State of Illinois are proved to exist, the accused has been denied due process. And Respondent omits to mention *Hawk* v. *Olson*, 326 U. S. 271 (1945). This Court there held that a denial of a motion for continuance violated due process where effective assistance of counsel was lacking, although expressly noting that "there is no allegation or suggestion of ignorance of or unfamiliarity with procedural or substantive law or sub-normal mentality." 326 U. S. 277–278.

These decisions demonstrate that if any "special circumstances" are necessary in a case such as this, such circumstances are merely the existence of questions of law and procedure such as faced petitioners here (Petitioners' Brief, pp. 13–18). Re-

spondent criticizes this discussion as consisting of inference, deduction or presumption (Respondent's Brief, pp. 3, 17–18). But merely the questions involved in the interpretation of the indictment and determination of pleading strategy[1] were obviously beyond the capacity of persons not trained in the law (Petitioners' Brief, p. 13). Respondent says the indictment was orthodox in form (Respondent's Brief, pp. 2, 17). The answer is that orthodoxy to a lawyer may mean bewilderment and confusion to a layman.

Respondent's argument also omits reference to the complicated and difficult questions of interpretation of Illinois statutes and decisions with which petitioners were confronted. These cannot be dismissed as presumptions, inferences or deductions. This Court takes judicial notice of State statutes and decisions and the issues posed thereby. It has done so in substantially identical cases. *Williams* v. *Kaiser*, 323 U. S. 474–476 (1945); *Tomkins* v. *Missouri*, 323 U. S. 488–489 (1945); *Canizio* v. *New York*, 327 U. S. 82, 86 (1946).

There remain to be considered the decisions of this Court on which Respondent relied. *Betts* v. *Brady*, 316 U. S. 455 (1941), and *Carter* v. *Illinois*, 329 U. S. 173 (1946), were distinguished in petitioners' main brief, pages 25–27. In fact, the majority's express reliance in the *Carter case* on the record showing of advice to the accused of his right to counsel and its inference therefrom that benefit of counsel was waived indicate that, where the record shows the absence of such advice and Respondent has not claimed that petitioners waived their right to counsel, a different result must follow. And *Adams* v. *U. S. ex rel McCann*, 317 U. S. 269 (1942), also militates against rather than in favor of the Respondent's position. In that case there was an express and written waiver; yet the Court affirmed the conviction only after a determination that the waiver was

[1]Respondent fails to note that indictments for petty larceny were contained in the single printed form setting forth the indictments for burglary.

intelligently and understandingly made. Here there was no waiver at all.

Respondent's Brief implies that there is an important distinction between capital and non-capital cases as regards the right of an accused to counsel. This is clearly refuted by recent decisions of this Court in the following non-capital cases: *White* v. *Ragen*, 324 U. S. 760 (1945); *Rice* v. *Olson*, 324 U. S. 786 (1945); *Canizio* v. *New York*, 327 U. S. 82 (1946); *De Meerleer* v. *Michigan*, . . . U. S. . . ., 67 S. Ct. 596 (1947); *House* v. *Mayo*, 324 U. S. 42 (1945). The test now is whether the defendant is "on trial in a state court on a *serious criminal* charge." *White* v. *Ragen*, 324 U. S. 760, 763.

Respondent also appears to suggest that inasmuch as a reversal by this Court of the decision of the Illinois Supreme Court will void petitioners' conviction, a stricter rule as to the right of counsel should be applied than if this case arose on *habeas corpus*. Obviously procedural differences do not vary the requirements of due process. When the method of procedure by which a case has reached this Court necessitates reversal for a new trial on the issue of guilt, this Court will void the conviction. *Powell* v. *Alabama*, 287 U. S. 45 (1932); cf. *Norris* v. *Alabama*, 294 U. S. 587 (1935); *Hill* v. *Texas*, 316 U. S. 400, 406 (1942).

III.

A SUBSTANTIAL MAJORITY OF THE STATES DO NOT FOLLOW THE ILLINOIS RULE AS TO RIGHT TO COUNSEL.

Respondent relies heavily upon State cases as indicating general acceptance of the Illinois rule that a failure to request counsel operates as a waiver of the right to counsel, even if the accused was not advised of and was ignorant of said right (Respondent's Brief, pp. 6–8, 20–21). Inasmuch as petitioners

here base their claim on the Fourteenth Amendment to the Federal Constitution and as this Court has on several occasions declared similar State rules invalid, the authority of State cases is questionable. However, for the convenience of this Court we have reviewed the Respondent's analysis of the State authorities and statutes and our comments thereon and corrections thereof appear in an appendix to this brief.

This appendix shows that some of the decisions cited by Respondent do not support the proposition that a failure to request counsel constitutes a waiver of the right to counsel, and that others have been superseded by statute. This is also true of some of the decisions collected on page 21 of Respondent's brief as supporting the proposition that a defendant who pleads guilty to a non-capital offense without requesting counsel thereby waives his right to counsel.

However, aside from the foregoing errors, the classification of cases on pages 20 and 21 of Respondent's brief begs the question now before this Court. The contention of petitioners is that they were entitled to be advised of their right to counsel regardless of whether or not, after being so advised, they would be held to waive counsel in the event they did not request counsel. To the extent that the respective State rules may be of significance, it would therefore seem that the following classification would be more enlightening.[1]

1. States in which it is expressly required that one accused of a non-capital offense be advised of his right to counsel:

Arizona	Minnesota	Oregon
Arkansas	Montana	Pennsylvania
California	New York	South Dakota
Idaho	North Dakota	Utah
Iowa	Oklahoma	Washington
Kansas		Wisconsin

[1]The classification cites State rules in accordance with State statutes and decisions, and accordingly does not reflect the decisions of this Court overruling State decisions predicated upon State rules.

2. States in w. ch courts have a mandatory duty to appoint counsel in non-capital cases although there is no statute or decision expressly dealing with the duty to advise of the right to counsel.

Colorado	Nevada	North Carolina
Connecticut	New Mexico	Ohio
Indiana	Vermont	Tennessee
Maine		

3. States in which there has been no determination of the necessity of advising one accused of a non-capital offense of his right to counsel but where it is provided that counsel is waived if not requested:

Kentucky	Nebraska	Virginia
Louisiana	New Hampshire	West Virginia
Missouri	New Jersey	Wyoming

4. States in which it is expressly provided that there is no duty to advise one accused of a non-capital offense of his right to counsel:

Florida
Georgia
Illinois

5. States in which one accused of a non-capital offense has no right to counsel or where the appointment of counsel is a matter for the discretion of the trial court:

Alabama	Michigan (on guilty plea)
Delaware	Rhode Island
Maryland	South Carolina
Mississippi	Texas
Massachusetts (on guilty plea)	

The Illinois rule or its equivalent therefore prevails in only a minority of the 48 states.

CONCLUSION

It is respectfully submitted that petitioners were denied due process of law, and the decision of the Supreme Court of Illinois should be reversed.

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APPENDIX

The summary of constitutional and statutory provisions and court decisions relating to right of counsel appearing on pages 22–46 of the appendix to Respondent's brief is inaccurate or incomplete in certain instances. The following corrections or additions should be made:

Alabama:

Correctly set forth on page 22 of Respondent's brief.

Arizona:

Arizona Code Annotated, 1939, Chapter 44, Section 44–905.

> "If the defendant appear for arraignment without counsel, he shall be informed by the court that it is his right to have counsel before being arraigned, and shall be asked if he desires the aid of counsel; * * *."

Arkansas:

Correctly set forth on page 23 of Respondent's brief.

California:

Penal Code of California, Deering 1941, paragraph 859A (enacted in 1935):

> "* * * The foregoing provisions of this section shall not be construed to authorize the receiving of a plea of guilty from any defendant not represented by counsel."

Colorado:

Statute quoted in Respondent's brief, page 25, is quoted inaccurately. In the fifth line of the quotation the word "defense" should be followed by a comma, not a period, and the word "it" should begin with a small letter. When read after this change it is clear that this statute does not define the court's duties, but merely sets out the provision for payment of fees.

Colorado Statutes Annotated, Chapter 48, paragraph 471, is not quoted by Respondent and reads as follows:

> "The accused shall have the right to appear in person and by counsel. If he has no counsel the judge shall assign him one in that behalf only."

Connecticut:

Correctly set forth on page 25 of Respondent's brief.

Delaware:

Correctly set forth on page 26 of Respondent's brief.

Florida:

Correctly set forth on page 26 of Respondent's brief.

Georgia:

Correctly set forth on page 27 of Respondent's brief.

Idaho:

Correctly set forth on page 27 of Respondent's brief.

Illinois:

Correctly set forth in briefs proper of both parties.

Indiana:

As intimated in Respondent's brief, page 29, the requirement of appointment of counsel in Indiana is mandatory unless the accused freely and understandingly waives his rights. See also *Knox County Council* v. *State ex rel. McCormick*, 217 Indiana 493, 29 N.E. (2d) 405 (1940).

Iowa:

Correctly set forth on page 29 of Respondent's brief.

Kansas:

See the 1941 statute quoted at page 30 of Respondent's brief. It is true that prior to this statute the requirement of appointment was not mandatory. The statute is perfectly clear, and

the case cited by Respondent at page 30 for the proposition that the effect of the statute is not certain is irrelevant, since the conviction in that case occurred prior to the enactment of the 1941 statute.

Kentucky:

Correctly set forth on page 30 of Respondent's brief.

Louisiana:

A later case than any cited by Respondent is *State* v. *Youchunas*, 187 Louisiana 281, 174 Southern 356 (1937), holding that at least in felony cases the record must show whether or not the defendant had counsel and, if it shows that he did not, a good excuse for the failure to appoint counsel must appear of record or the conviction will not stand.

Maine:

The applicable statute, not quoted by Respondent, is Laws of Maine 1945, Chapter 135, Section 11, which provides:

> "Competent counsel shall be assigned by the court in cases punishable by imprisonment for life, when it appears that the accused has not sufficient means to employ counsel."

Maryland:

The Maryland statute, not quoted by Respondent, leaves the matter of counsel entirely up to the discretion of the court. The applicable statute is Article XXVI, Section 7, Maryland Annotated Statutes, which provides for appointment of counsel "whenever in the judgment of the court in which any case is pending a just regard for the rights of the accused requires it."

Massachusetts:

Correctly set forth on page 32 of Respondent's brief.

Michigan:

Correctly set forth on page 32 of Respondent's brief.

Minnesota:

Correctly set forth on page 33 of Respondent's brief.

Mississippi:

Correctly set forth on page 33 of Respondent's brief.

Montana:

Correctly set forth on page 34 of Respondent's brief.

Missouri:

Correctly set forth on page 34 of Respondent's brief.

Nebraska:

Correctly set forth on page 34 of Respondent's brief.

Nevada:

While the earlier Nevada cases appear to hold that a request for counsel is required, the later cases do not. See *Ex parte Kramer*, 122 Pac. (2d) 862, cited in Respondent's brief, page 35, where the court said at page 877:

> "* * * From the time of the arraignment until the beginning of trial * * * accused has the right to the aid of counsel in a real sense."

and also at page 877:

> "* * * Accused is entitled to have counsel before as well as at the trial and at every stage of the proceedings."

New Hampshire:

Correctly set forth on page 35 of Respondent's brief.

New Jersey:

Correctly set forth on page 36 of Respondent's brief.

New Mexico:

Correctly set forth on page 36 of Respondent's brief.

New York:

The more recent New York cases do not follow the request rule but hold that appointment of counsel is mandatory. *People* v. *Sedlak*, 53 N. Y. S. (2d) 51, (1944); *People ex rel. Moore* v. *Hunt*, 25 App. Div. 24, 16 N. Y. S. (2d) 19, (1938); *People* v. *Foster*, 59 N. Y. S. (2d) 477 (1945).

North Carolina:

The statutes and cases cited in Respondent's brief, page 37, indicate that the appointment of counsel is mandatory only in capital cases. It has been held, however, that it is also mandatory in non-capital cases. *State* v. *Hardy*, 189 North Carolina 799, 128 S. E. 152 (1925), where the court said at page 153:

> "* * * The right of every man, accused, prosecuted, or put on trial upon a criminal charge, to be heard, and to have counsel in all matters necessary for his defense * * * is too fundamental for discussion."

North Dakota:

The statute is correctly quoted at page 38 of Respondent's brief. See also *State* v. *Throndson*, 49 North Dakota 345, 191 N. W. 628 (1922), holding that an intelligent waiver of the right to counsel is possible, but noting the importance of the fact that defendant was advised of his rights to counsel, and indicating that without such advice intelligent waiver is not possible.

Ohio:

Correctly set forth on page 38 of Respondent's brief.

Oklahoma:

Correctly set forth on page 38 of Respondent's brief.

Oregon:

Correctly set forth on page 39 of Respondent's brief.

Pennsylvania:

Correctly set forth on page 40 of Respondent's brief.

Rhode Island:

Correctly set forth on page 40 of Respondent's brief.

South Carolina:

Correctly set forth on page 40 of Respondent's brief.

South Dakota:

Correctly set forth on page 41 of Respondent's brief.

Tennessee:

Statute correctly cited at page 42 of Respondent's brief; also Williams' Tennessee Code Annotated, Section 11733, providing:

> "Every person accused of any crime or misdemeanor whatsoever is entitled to counsel in all matters necessary for his defense, as well as to facts as to law."

The case of *Kizer* v. *State*, 80 Tennessee (12 Lea), 564, cited in Respondent's brief, page 42, is misstated therein. The case did not involve a refusal to appoint counsel, but rather a reasonable limitation by the court on the time allowed for argument by accused's counsel.

Texas:

Correctly set forth on page 42 of Respondent's brief.

Utah:

The cases cited by Respondent at page 43 are not in point, since they do not involve the right to counsel.

Vermont:

The case of *State* v. *Gomez*, 89 Vt. 490, cited at page 43 of Respondent's brief, is incorrectly stated inasmuch as it does not

deal with when the court must assign counsel but only with the matter of when the state must pay for counsel.

Virginia:

Correctly set forth on page 44 of Respondent's brief.

Washington:

Correctly set forth on page 44 of Respondent's brief.

West Virginia:

Correctly set forth on page 45 of Respondent's brief.

Wisconsin:

While the case of *State ex rel. Doxtater* v. *Murphy*, 248 Wis. 593, 22 N. W. (2d) 685, cited by Respondent at page 46, does set forth Wisconsin's procedural requirements for habeas corpus, such requirements would not apply to a review on writ of error, as here. The court said in that case, at page 595:

> "The defendant, the petitioner here, took no appeal from the judgment and sentence of the court. If such an appeal had been taken undoubtedly error would have been confessed and the case remanded to the trial court."

The case of *State ex rel. Drankovich* v. *Murphy*, 248 Wis. 433 22 N.W. (2d) 540, indicates that Wisconsin also requires appointment of counsel.

Wyoming:

Correctly set forth on page 46 of Respondent's brief.